

Conyers, Nadler and Scott: Reform Patriot Act, Fight Terrorism While Protecting our Civil Liberties

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(Washington)—House Judiciary Committee Chairman John Conyers, Jr. (D-Mich.), Constitution, Civil Rights, and Civil Liberties Subcommittee Chairman Jerrold Nadler (D-N.Y.), and Crime, Terrorism, and Homeland Security Subcommittee Chairman Bobby Scott (D-Va.) today introduced the USA Patriot Amendments Act of 2009. The bill would amend and extend expiring Patriot Act and related provisions needed to combat terrorism, while at the same time better protecting Americans' privacy and civil liberties. The same Committee leaders also introduced the FISA Amendments Act of 2009, which would amend the Foreign Intelligence Surveillance Act (FISA) to safeguard the constitutional rights of Americans while ensuring that the government has the tools it needs to collect foreign intelligence.

"Over the past eight years, Americans grew tired of the same old scare tactics, designed to fool the public into believing that we needed to give up freedom to be safe from terrorism," said Conyers. "It is a new day and an opportunity for reform. The truth is that we can protect our nation from terrorist threats by giving our government the tools it needs while also ensuring there are checks and balances to protect against abuses."

"This legislation is borne of the necessity to reign in the overbroad provisions of the USA PATRIOT Act and ensure that the law is consistent with constitutional standards," said Nadler. "As we reauthorize expiring provisions of the PATRIOT Act, it is essential that we protect our homeland without abusing executive power or unnecessarily compromising the privacy of American citizens. In particular, this bill includes provisions of my legislation to reform National Security Letters — the National Security Letters Reform Act of 2009 — which are critical for protecting Americans against government invasion of privacy and, generally, for restoring critical checks and balances to our government. Notably, the bill would allow Americans to use libraries and bookstores without fear that their choice of books will be monitored by overzealous federal agents."

"Benjamin Franklin got it right when he said, 'those who would give up essential liberty to purchase a little temporary safety, deserve neither liberty nor safety,'" said Scott. "These bills assure that we secure our liberties and our freedoms without diminishing either."

A short summary of the USA Patriot Amendments Act and FISA legislation follows. Section-by-section summaries of both bills are attached.

H.R. 3845, USA Patriot Amendments Act of 2009 Brief Summary

Title I: Patriot Act Related Amendments

Roving Wiretaps

- Clarifies roving wiretap laws in order to ensure that the government only conducts surveillance on a single, identifiable target.

Section 215 Orders

- Improves the standard for issuing a Section 215 order by requiring specific and articulable facts to show that the tangible things sought are relevant to an authorized investigation, other than a threat assessment.

- Provides recipients of Section 215 orders with the ability to immediately challenge both the underlying order and any gag order associated with it.

- Facilitates compliance with already existing minimization procedures to ensure proper safeguards pertaining to information collected via Section 215 orders.

- Prohibits a request for Section 215 records to a library or bookseller for documentary materials that contain personally identifiable information concerning a patron.

Criminal “Sneak and Peak” Searches

- Adopts safeguards against abuse of searches where notice to subject of search is delayed by shortening the initial 30 day delay period to 7 days, requiring that any application for an extension in the 7 day delay be made by the Senate confirmed US Attorney in the district where the delayed notice warrant was originally obtained, and removing ability to obtain delay by merely alleging that notice would “otherwise seriously jeopardize an investigation or unduly delay a trial.”

Pen Register and Trap and Trace Device

- Requires more specificity in the application for pen register and trap and trace and establishment of minimizations procedures.

Nationwide Court Orders

- Allows a provider of electronic communication service or remote computing service to challenge a subpoena, order, or warrant requiring disclosure of customer communications or records in either the district in which the order was issued or the district in which the order was served.

Audits, Reports, and Sunsets

- Requires annual Inspector General audits and reports to Congress on the use of Section 215 orders, NSLs, and Pen Registers and Trap and Trace Devices through the end of 2013.

- Provisions pertaining to Section 215, NSLs, and roving wiretaps will sunset on December 31, 2013.

Lone Wolf

- Allows the Lone Wolf provision to sunset at the end of this year (December 31, 2009).

Title II: NSL Reform

- Ensures that the FBI can obtain basic information without a court order, but also adds reasonable safeguards.

- Improves the issuance standard for NSLs by requiring specific and articulable facts showing that there are reasonable grounds to believe that the information sought pertains to a foreign power or agent of a foreign power, and requires the FBI to record them in a written certification.

- Improves procedures which provide an opportunity for an NSL recipient to challenge the NSL itself and any gag order associated with it.

- Authorizes meaningful, constitutionally sound judicial review of NSLs and associated gag orders.

- Requires the Attorney General to authorize the use of any information acquired or derived from an NSL in a criminal proceeding.

- Requires the Attorney General to establish minimization and destruction procedures to ensure that information obtained pursuant to an NSL regarding persons who are no longer of interest in an authorized investigation is destroyed.

H.R. 3846, FISA Amendments Act of 2009 Brief Summary

Telecommunications Immunity

- Repeals the retroactive immunity provision in the FISA Amendments Act of 2008, leaving it to the courts to determine whether telephone companies that complied with the illegal warrantless wiretapping program acted properly under the laws in effect at the time and therefore deserve immunity.

Bulk Collection

- Prevents the government from using the warrantless collection authorities of the FISA Amendments Act of 2008 to conduct “bulk collection,” which could include the collection of the contents of all communications between the United States and the rest of the world.

Reverse Targeting

- Places additional limits on the warrantless collection authorities of the FISA Amendments Act of 2008 to ensure that they are not used as a pretext when the government's real goal is to target the Americans with whom the ostensible foreign target is communicating.

Use of Unlawfully Obtained Information

- Limits the government's use of information about U.S. persons that is obtained under FISA Amendments Act of 2008 procedures that the FISA Court later determines to be unlawful, while still giving the FISA Court flexibility to allow such information to be used in appropriate cases.

Protections for International Communications of Americans

- Permit unfettered acquisition of foreign-to-foreign communications and of communications of suspected terrorists into or out of the United States, while creating safeguards for communications not related to terrorism that the government knows have one end in the United States.